

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.70 OF 2005
WITH
CRIMINAL APPLICATION NO.10 OF 2005

Divyang Chimanlal Momaya ... Applicant

versus

The State of Maharashtra & anr. ... Respondents

...

Mr.A.M.Saraogi, for the Applicant.

Mr.V.B. Konde Deshmukh, A.P.P., for the
Respondent State.

Mr. Atul G. Damle, for Respondent No.2.

...

CORAM : A.M.KHANWILKAR, J.

16th March 2005

P.C.:

. Heard Counsel for the parties. The
grievance made in these applications against the
Presiding Officer of the Subordinate Court, who
is in seisin of the trial of the respective

criminal action pending against the Applicant(s), is that, he has made up his mind to convict the Applicant(s) and the said harrassment is continued by issuing bailable warrant against the Applicant(s). Reliance is placed on the averments made in paras 18 and 19 in particular to justify the claim for transfer of the case from the present Presiding Officer to some other Court.

2. Even on fair reading of the averments in the applications as filed, there is nothing to accept the grievance made about the bias. The allegations are too general and vague. Merely stating that the Applicant has reason to believe that the Magistrate has made up his mind to convict the Applicant cannot be the basis to grant relief as prayed in the applications. The relief of the kind prayed in the applications is, in that sense, a drastic order to be passed, for which appropriate case has to be made out. As observed earlier, I am not satisfied with the claim putforth by the Applicants to justify the relief of transfer of the case from the file of the present Presiding Officer to some other

Court.

3. Besides, I find substance in the grievance made on behalf of Respondent No. 2 complainant that the attempt of the Applicant(s) is only to protract the proceedings on one ground or the other and this conduct has been deprecated by the Sessions Court in Criminal Revision Application No. 60 of 2004. The Sessions Court has observed that the Applicants have resorted to all possible means to prolong the proceedings. After having recorded that finding, in its order dated 30th August 2004, the Sessions Court directed the trial Court to frame charge against the accused and to proceed with the trial forthwith, keeping in mind that the trial pertained to offence of 1995 and was pending for almost 10 years. There is substance in the grievance of the Respondent No.2 that the present applications have been filed only to circumvent the direction given by the Sessions Court to the trial Court, as it has been presented before this Court in January 2005.

4. Taking overall view of the matter, in my

opinion, no indulgence can be shown to the Applicant(s). It is a different matter if the Applicant(s) were to appear before the same Court and the Judge was to recuse himself of the trial in view of the baseless allegations made by the Applicant(s) against him in the present proceedings. However, for the nature of applications filed before this Court, no ground is made out for transfer either in fact or in law. Hence, both these applications are rejected.

5. At this stage, Mr. Saraogi for the Applicant(s) submits that in the event the Applicant(s) were to file application for dispensing with their personal appearance, the trial Court be directed to consider the same in accordance with law in particular in the light of recent exposition of this Court (decision of Justice Bhosale). Needless to observe that the concerned Judge will consider the said application, if filed, on its own merits in accordance with law.

. Parties to act on the authenticated copy

of this order.

(A.M.KHANWILKAR, J.)